

REMARKS

As an initial matter, Applicants would like to thank the Examiner for indicating the allowability of the subject matter of claims 9, 11, and 14-15.

Comment on Statement of Reasons for Indication of Allowable Subject Matter

Applicants provide the following comments on the Examiner's statement of reasons for the indication of allowable subject matter. The Examiner stated that the "prior art of record does not teach nor fairly suggest a structure for translating movement that includes two rocker arms and a stop rod, the stop rod also being connected to and positioned between the two rocker arms, the stop rod also being connected to the pipetting-needle carrier, such that the stop rod moves with the pipetting-needle carrier, or that the translating movement structure including a thrust plate and a catch member, wherein the thrust plate is engagable with the plunger, and wherein the catch member is connected to a means for driving the pipetting needle carrier, such that movement of the pipetting-needle carrier in a first direction results in movement of the catch member and thrust plate in a second direction opposite the first direction." Applicants would like to clarify the assertions set forth in the Examiner's statement.

With respect to claims 9, 14, and 15, Applicants would like to clarify that none of these claims recite a translating movement structure that includes "a thrust plate and a catch member, wherein the thrust plate is engagable with the plunger, and wherein the catch member is connected to a means for driving the pipetting needle carrier, such that movement of the pipetting-needle carrier in a first direction results in movement of the catch member and thrust plate in a second direction opposite the first direction."

With respect to claim 11, Applicants would like to clarify that claim 11 does not recite a structure for translating movement that "includes two rocker arms and a stop rod, the stop rod also being connected to and positioned between the two rocker arms, the stop rod also being connected to the pipetting-needle carrier, such that the stop rod moves with the pipetting-needle carrier."

Comment on § 102(b) Rejection

On pages 3-5 of the Office Action, claims 7, 8, and 10 were rejected under 35 U.S.C. § 102(b) as being anticipated by Clark et al. (U.S. Patent No. 5,578,494) ("Clark"). Applicants respectfully traverse this rejection.

Independent claim 7 recites, among other aspects, "a plunger for opening and closing a reagent container stopper by engaging and releasing a catch on the reagent container stopper, the plunger movable between an at rest position and a working position" and "an automatic conveyor for moving the reagent container relative to the plunger, wherein the conveyor is movable in a first direction to place the plunger in a position to open the stopper, and wherein the conveyor is movable in a second direction, opposite to the first direction, to place the plunger in a position to close the stopper." Clark does not disclose the claimed invention.

In the Response to Arguments on page 2 of the Office Action, the Examiner asserted that "the claim only requires a single plunger that can open **or** close a reagent container stopper. As such any device containing an element that can close a container meets the limitation of the claims. The term 'or' is an alternative phrase which only requires one of the two limitations to be met." (Emphasis original). Applicants respectfully disagree with the Examiner's assertion, as independent claim 7 recites "a

plunger for opening **and** closing a reagent container stopper." (Emphasis added).

Accordingly, in order to anticipate under 35 U.S.C. §102, the cited reference must disclose a plunger for opening and closing a reagent container stopper. Clark, however, does not disclose at least this aspect of the invention.

Clark discloses a cap actuator system 464 having a housing 466 with a bracket 470 for fixing the cap actuator station 464 above the reagent carousel 32. Clark further discloses the cap actuator station 464 having opening pins 472 in a pin block 473 that are actuated downwardly against the tab lever 454(b) to flip the cap 454 from the closed position in Fig. 35 to the open position in Fig. 34, and a cap actuator 474 that is dragged along the top of the cap 454 to force it down to the closed position. (Col. 45, lines 37-59). Clark does not disclose the claimed invention because two different elements are used to open and close the cap, rather than a single element, the plunger, as recited in independent claim 7. In fact, Clark explicitly discloses that the reagent carousel 32 rotates the desired reagent containers 441 to an opening position below the cap actuator station 464 so the opening pins 472 can open the cap 454, and then rotates the reagent containers 441 to a locking position that avoids contact with the opening pins 472. Thus, the opening pins 472 do not close the cap 454. Accordingly, Clark does not disclose or suggest "a plunger for opening **and** closing a reagent container stopper by engaging and releasing a catch on the reagent container stopper, the plunger movable between an at rest position and a working position" (emphasis added) as recited in independent claim 7, and thus, for at least this reason, Applicants respectfully request the allowance of independent claim 7 and its dependent claims 8-11 and 14-15.

Furthermore, the Examiner also asserted in the Response to Arguments on page 2 of the Office Action that “Clark discloses that the device comprises ‘an Indexer which comprises electronics for controlling the motor by the driver. It determines move profiles, which include direction of rotation, number of steps to move and acceleration and velocity parameters.’ The claim is interpreted to only require a conveying system that is movable in opposite directions. The action that is accomplished by the movement is considered intended use and does not limit structure of the invention as presently drafted in the claims.” Applicants respectfully disagree with the Examiner’s assertions.

Specifically, Applicants disagree with the Examiner’s assertion that the claim is “interpreted to only require a conveying system that is movable in opposite directions.” Independent claim 7 recites “an automatic conveyor for moving the reagent container relative to the plunger, wherein the conveyor is movable in a first direction to place the plunger in a position to open the stopper, and wherein the conveyor is movable in a second direction, opposite to the first direction, to place the plunger in a position to close the stopper.” For anticipation under 35 U.S.C. §102, the reference must teach **every aspect** of the claimed invention either explicitly or implicitly. M.P.E.P. 706.02. Accordingly, Applicants assert that the claim must be interpreted as reciting a conveying system movable in multiple directions in combination with the other aspects of the claimed invention.

Moreover, even assuming *arguendo* that Clark discloses a conveying system movable in opposite directions, Clark does not disclose “wherein the conveyor is movable in a first direction to place the plunger in a position to open the stopper, and

wherein the conveyor is movable in a second direction, opposite to the first direction, to place the plunger in a position to close the stopper," once again, because two different elements, the opening pins 472 and cap actuator 474 are used to open and close the cap 454 respectively. Accordingly, because Clark does not disclose or suggest the claimed invention, Applicants respectfully request withdrawal of the Section 102(b) rejection.

Applicants further submit that claims 8-11 and 14-15 depend from independent claim 7, and are therefore allowable for at least the same reasons that the independent claim is allowable. In addition, at least some of the dependent claims recite unique combinations that are neither taught nor suggested by the cited references, and therefore at least some also are separately patentable.

Applicants respectfully request that this Request for Reconsideration be considered by the Examiner, and request that the Examiner acknowledge that the pending claims are in condition for allowance. Applicants submit that there are no proposed amendments of the claims, and thus that this Request for Reconsideration does not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner, since all of the elements and their relationships claimed were either earlier claimed or inherent in the claims as examined. Therefore, this Request for Reconsideration should allow for immediate action by the Examiner.

Furthermore, Applicants respectfully point out that the final action by the Examiner presented some new arguments as to the application of the art against Applicants' invention. It is respectfully submitted that the consideration of this Request

for Reconsideration would allow the Applicants to reply to the final rejections and explain why the pending claims are in condition for allowance.

In view of the foregoing remarks, Applicants submit that this claimed invention is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicants therefore request the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

The Office Action contains characterizations of the claims and the related art with which Applicants do not necessarily agree. Unless expressly noted otherwise, Applicants decline to subscribe to any statement or characterization in the Office Action.

In discussing the specification, claims, abstract, and drawings in this Request for Reconsideration, it is to be understood that Applicants are in no way intending to limit the scope of the claims to any exemplary embodiments described in the specification or abstract and/or shown in the drawings. Rather, Applicants are entitled to have the claims interpreted broadly, to the maximum extent permitted by statute, regulation, and applicable case law.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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